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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,012	03/08/2006	Frank Cuttitta	4239-82094-06	4600

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EXAMINER
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PAGONAKIS, ANNA

ART UNIT	PAPER NUMBER
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1628

NOTIFICATION DATE	DELIVERY MODE
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08/26/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

tanya.harding@klarquist.com  
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<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/571,012	<b>Applicant(s)</b> CUTTITTA ET AL.	
	<b>Examiner</b> ANNA PAGONAKIS	<b>Art Unit</b> 1628	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 80,81,90 and 92-97.  
 Claim(s) withdrawn from consideration: 91.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Brandon J Fetterolf/  
 Supervisory Patent Examiner, Art Unit 1628

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's remarks presented in the after-final arguments regarding the 112 rejection have been considered and entered into the record, but are not found persuasive.

Firstly, it is noted that arguments that have already been addressed and made of record in the final rejection mailed on will not be repeated herein.

Applicant alleges that the addition of GRP to the culture media increased the level of IP3, while when both GRP and compound 77427 are added to the culture little IP3 is released. Based on these results Applicant states that "compound 77427 inhibits the IP3-stimulating activity of GRP." Further, Applicant alleges that the very nature of the secondary screen would make it impossible to detect the inhibition of GRP stimulation of IP3 released by compound 77427 in the absence of GRP. This is not found persuasive. Applicant fails to advance any specific reasons or evidence, aside from Counsel's own allegations, in support of this position that no motivation exists in the present obviousness rejection. This assertion by Counsel is an unsupported allegation and fails to take the place of evidence in the record. Statements of this nature are clearly unpersuasive in accordance with guidance provided at MPEP 2145, which states "The arguments of counsel cannot take the place of evidence in the record." Arguing the above, Applicant is drawn to the breadth of their claim 80 which states "a method of inhibiting an activity of a GRP." Without acquiescing to Applicant's arguments, In the instant case, Applicant has merely showing the decrease of IP3 levels. Therefore, Applicant's arguments are not commensurate in scope with the instant independent claim. Applicant alleges that Figure 6 shows that the effects of compound 77427 on GRP-stimulated angiogenesis is similar to the effects of a known GRP inhibitor. This is not found persuasive. Firstly, compound 77427 and compound 2A11 in Figure 6 are administered at significantly different amounts. Further, it is not apparent how inhibition of angiogenesis is measured. It should be noted that the description of the figure in the specification does not set forth an interpretation of the results found in Figure 6. Applicant alleges that nowhere in the specification is referred to as a modulating compound and further it is not shown that compound 77427 stimulates a GRP activity. This is not found persuasive. Applicant is guided to page 11-12 of the specification which states "the invention relates to a method for modulating an activity of a gastrin releasing peptide (GRP) comprising contact with an effective amount of... more particularly a compound of formula XV." Though Table I does state that compound 77427 is an antagonist, the instantly claimed compound of XV' taught in the specification to be a modulatory agent. Applicant alleges that compound 77427 is shown to be a GRP inhibitor and guides the Examiner to page 18, lines 11-13 which states that the mechanism of action includes binding of the small molecule to AM rather than to the receptor. This is not found persuasive. The passage cited by Applicant seems to be drawn to AM and not claimed GRP.

The rejections are maintained for the reasons set forth above and those made previously of record.